

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
MAX NO.

1976

1988

DATE OF DECISION 12.7.89

Shri R.R. Sud. Applicant (s)

Shri J.C. Singhal Advocate for the Applicant (s)

Versus
Union of India & Ors Respondent (s)

Shri Inderjit Sharma Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P. Srinivasan, Administrative Member

The Hon'ble Mr. T. S. Oberoi, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

} *No.*

JUDGEMENT

(Judgement of the Bench delivered by Hon'ble
Shri P. Srinivasan, Administrative Member)

The applicant before us retired from the Indian Railway Accounts Service on 30.4.1989 as Financial Adviser and Chief Accounts Officer, (F.A. & C.A.O) of the Western Railway at Bombay. Soon after his retirement a Pension Payment Order was issued to him on 7.6.1979, indicating the pension and additional relief to which he was entitled. On 11.6.79 the Railway Board issued a letter saying that the Government of India had decided to treat a part of the Dearness Allowance paid to a Government servant while in service as Dearness Pay to be included in his emoluments for determining the quantum of his pension. This new formula would apply to all Government servants retiring after 30.4.1979. The same letter at ^{pura} page 4 gave an option to persons who retired after 30.9.77 but not later than 30.4.1979 to draw pension calculated with reference to their emoluments without the element of Dearness Pay, with graded relief thereon

P.L.K.

to the full extent admissible from time to time or to have their pension recalculated after including the element of Dearness Pay, in their emoluments in which event some part of the graded relief would not be admissible to them. In pursuance of this letter, the applicant exercised his option to come over to the new dispensation, namely, to have his pension calculated by including the element of Dearness Pay in his emoluments on the date of his retirement. His option was accepted and he was paid pension accordingly. When the 4th Pay Commission gave its report, the pension of all retired Government servants including Railway Servants had to be revised with effect from 1.1.1986. The applicant says that when he approached the authorities for revision of his pension in accordance with the recommendations of the 4th Pay Commission from 1.1.1986, he discovered that he had exercised the option in 1979 on the basis of incorrect data. According to him, the pension payment order (P.P.O) issued to him on 7.6.1979 setting out the pension and additional relief due to him contained a mistake in so far as the additional relief was stated to be Rs. 100/- while it should have been Rs. 175/-. That P.P.O. was issued before the new formula taking into account Dearness pay for computing pension was announced. Comparing the emoluments he would receive according to the P.P.O. to what he would get under the new formula, he found that latter more beneficial and opted for it. Had he known that the PPO issued to him was wrong and that he was entitled to additional relief on pension of Rs. 175/- and not Rs. 100/- he would have found it more beneficial not to opt for the new formula. He represented to the authorities that he be allowed to exercise his option once again so that his pension from 1979 onwards could be recalculated according to the old formula and paid to him and his revised pension from 1.1.1986 could also be fixed on that basis. According to the applicant, he is allowed to exercise his option afresh in this manner, the revised pension to which he would have been entitled from 1.1.1986 would be

P. F. T. S.

Rs. 2430/- instead of Rs. 2273/- as fixed by the respondents.

The respondents declined to allow him to exercise his option again by their letter dated 19.9.1988 (Annexure A-1, page 12 of the application) in the following words:

" The points raised in your representation have been examined in consultation with Ministry of Personnel, Public Grievances and Pensions. It is regretted that it is not possible to allow a fresh option in this case."

Aggrieved by this decision, the applicant has filed the present application.

2. Shri J.C. Singhal, learned counsel for the applicant made the following submissions; When the applicant was called upon to exercise an option in June, 1979, he had to choose the alternative which would be more beneficial to him. He had to compare the total amount of pension and relief to which he would be entitled if dearness pay were not reckoned as part of the emoluments with the pension and relief which would be admissible to him according to new formula by including Dearness Pay in his emoluments and he had to choose the formula which would give him a higher pension. He had been issued a Pension Payment Order on 7.6.1979 showing the figure of pension and additional relief admissible to him under the old formula. This Pension Payment Order indicated that, in addition to pension, he was entitled to additional relief of Rs. 100/-. According to the Railway Board Circular letter dated 25.5.1978 additional relief on pension was admissible at the rate of 35% of pension subject to a minimum of Rs. 35/- per month and a maximum of Rs. 175/- with effect from 1.9.1977. This circular was in force when the applicant retired. Therefore the additional relief which should have been shown in the P.P.O. in accordance with the said circular letter was Rs. 175/-. The P.P.O. was erroneous in so far as it stated the additional relief to be Rs. 100/-. No doubt the applicant could have got the figure of additional relief verified and corrected but he had failed to do so. All the same by issuing a P.P.O. to the applicant indicating that he was entitled

P. S. - 3 -

to additional relief of Rs. 100/-, the respondents had misrepresented the facts to him and it was on this basis that he chose the new formula while exercising the option. Exercising the option was in the nature of concluding a contract. The applicant had accepted the offer of the respondents and had exercised the option to come over to the new formula; he did so on the basis of a misrepresentation by the respondents in the P.P.O. This being so, the respondents should have allowed the applicant to exercise his option afresh when he discovered that the additional relief which he would have got under the old formula was Rs. 175/- and not Rs. 100/- as stated in the P.P.O. Shri Singhal pointed out that in fact the additional relief due to a pensioner had been revised with retrospective effect from 1.12.1978 to 40% as a result of which the additional relief due to the applicant would have been Rs. 200/-. He, therefore, submitted that the impugned letter of the Railway Board dated 19.9.1988 be set aside and the respondents directed to allow the applicant a fresh option in the matter with all consequential relief.

3. Shri Inderjit Sharma, learned counsel for the respondents strongly refuted the contentions of Shri Singhal. He, however, very fairly did not press the point about limitation raised in the reply of the respondents, rightly in our opinion; it is of interest to note that in 1979-(1)-S.L.R.-757, their Lordships of the Supreme Court observed "that Government and public authorities should not in all morality and justice take up the technical plea of the limitation to deny the just claim of the citizens." When the original P.P.O. was issued to the applicant on 7.6.79 the applicant who had retired from the high office of a F.A. and C.A.O. in which capacity he would have issued several pension payment orders should have taken up the correctness of the figures immediately. There is no question of misrepresentation because the rules according to which a P.P.O. is prepared are accessible to everybody. Shri Sharma also submitted that it was not right to say that the additional relief should have been Rs. 175/- and not Rs. 100/- as in the P.P.O. issued to the applicant. For this

P. S. B.

he relied on a circular of the Railway Board issued on 1st June, 1979 and circulated by Western Railway by their communication dated 14/20th June, 1979. In any case the applicant having exercised the option and that option having become final he could not be allowed to exercise the option again. Shri Sharma drew our attention to the circular letter dated 11.6.1979 which clearly indicated that an option once exercised became final and cannot be reopened.

4. We have considered the matter very carefully. When the formula for computing pension is revised and a retired Government servant is given an option to choose between the old and the new formulae, the intention is to enable him to choose the alternative which gives him greater benefit. It is by now well settled that pension is not a bounty but a right of every retired government servant. The Government revises the formula for computing pension from time to time as a measure of social welfare for persons who have served it for long years faithfully and who in the evening of their lives, have to maintain themselves without being dependent on others. It is not disputed that a pension payment order was issued by the Railway to the applicant soon after his retirement indicating the pension and additional relief to which he would be eligible under the old formula i.e., without taking into account dearness pay. The applicant could have checked the figures appearing therein with the rules and circulars on the subject and if there was a mistake he could have got it corrected at the time itself. But, if there was indeed a mistake and the applicant failed to point it out, at the time he could not be denied what was rightly due to him; if a new formula had been introduced and he had continued to draw pension based on a P.P.O. which many years later, he discovered to be erroneous, could he not seek for a correction of the P.P.O. and claim arrears of pension right from the beginning? After all, pension is an obligation

P.S. - 78

9

cast on the Government as an employer and if in a given case, it is found that it has been paid short for a long period, surely Government would not resist a claim for payment of arrears. If on the basis of an erroneous P.P.O., the employee has exercised his option wrongly, can he not ask for a refixation of his pension after correcting the initial error in the P.P.O. and allowing him a fresh option? If the mistake in a P.P.O. can be corrected after pension has been drawn according to it for a long time, we see no reason why a consequential mistake in the exercise of option should not be allowed to be rectified too. To our mind this is not so much a case of reopening an option once exercised as one ^{of} correcting ~~of~~ a mistake in the computation of pension. If, therefore, there was a mistake in the P.P.O. issued to the applicant as he contends here, he is entitled to have it rectified and as a consequence to exercise a fresh option on the basis of the corrected P.P.O.; he is also entitled to pension based on the fresh option from the beginning and revision of pension from 1.1.1976 and to all arrears arising therefrom.

5. There is however a controversy as to whether the additional relief stated in the P.P.O. was incorrect. Shri Singhal has relied on two letters issued by the Railway Board one dated 25.5.1978 and the other dated 8.8.1979. The first mentioned letter sets out the relief on pension due to Railway employees retiring from service on and after 1.1.1973 according to which relief admissible with effect from 1.9.1977 was 35% of pension subject to maximum of Rs.175/-: the basic pension due to the applicant as shown in the P.P.O. is Rs.1175/-, and so the maximum became applicable in his case. For persons retiring on and after 31.3.1979, the second mentioned letter of 8.8.1979 raised the relief to 40% subject to a maximum of Rs.200/- with effect from 1.12.1979. This letter also goes on to state that in respect of those who retired on or after 30.4.1979 and who had opted for the benefit of merger of

P. J. S. W.

dearness pay for the purpose of pension, the maximum relief would be restricted to Rs.100/-. From this it would appear that the pension payment order issued to the applicant under the old formula without taking into account dearness pay was incorrect in so far as it indicated the additional relief as Rs.100/-. On the other hand, Shri Sharma referred us to Railway Board's letter dated 14/20th June, 1979 in which the slab system for calculating pension was introduced in respect of persons retiring on or after 31.3.1979. After setting out the slabs the letter goes on to say that the pension as determined in accordance with the said slabs plus the maximum relief on pension at the rate of Rs.100/- per month would be subject to an overall ceiling of Rs.1500/- per month. From this, Shri Sharma would have us believe that even prior to the merger of dearness pay for the purpose of calculating pension, the maximum relief admissible to a pensioner was only Rs.100/-. To us, however, it seems that Railway Board's letter dated 14/20th June, 1979 is not really concerned with the quantum of additional relief admissible to pension under the old formula. Though, it appears to us on a conspectus of all the circulars cited above that Shri Singhal is probably right in stating that there was an error in the P.P.O., we do not wish to express a final opinion on this. We would prefer that the respondents themselves verify the position in this regard and ascertain whether the figure stated in the P.P.O. was correct or not. If they find that the applicant would have been eligible for an additional relief of Rs.175/- or Rs.200/- under the old formula and not Rs.100/- as stated in the P.P.O., we direct the respondents to allow the applicant to exercise a fresh option and to allow him pension from the beginning on the basis of the option so exercised: his pension from 1.1.1986 should also be revised accordingly.

6. In the result we pass the following orders: -

(i) The respondents will examine whether the figure of additional relief stated in the P.P.O. was correct as per

P.S. 105

the rules and instructions in force at the time . If they find that the additional relief should have been Rs.175/- or Rs.200/- and not Rs.100/- as stated in the P.P.O., they will allow the applicant a fresh option in terms of Railway Board's Circular of 11.6.1979 to be exercised by him within a month from the date of receipt of this order.

ii) If in terms of our direction at sub-para(i) above the applicant is given a fresh option, his pension from the date of his retirement should be redetermined according to the option exercised by him. His pension from 1.1.1986 should also be revised accordingly. Pension payment orders should be issued to the applicant accordingly within one month after he exercises option.

iii) Arrears due to the applicant on account of our order at (i) and (ii) above upto the date of issue of fresh pension payment order should be paid to him within 6 months after the issue of the fresh P.P.O.

7. The application is disposed of on the above terms leaving the parties to bear their own costs.

T.S. Oberoi
(T.S. Oberoi)
Member (Judl.)

P. Srinivasan
(P. Srinivasan)
Member (Admn.)